

103^D CONGRESS
2^D SESSION

S. 2221

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as “the Chemical Weapons Convention” and opened for signature and signed by the United States on January 13, 1993.

IN THE SENATE OF THE UNITED STATES

JUNE 21 (legislative day, JUNE 7), 1994

Mr. PELL (by request) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as “the Chemical Weapons Convention” and opened for signature and signed by the United States on January 13, 1993.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Weapons
5 Convention Implementation Act of 1994”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Congressional findings.
- Sec. 4. Congressional declarations.
- Sec. 5. Definitions.
- Sec. 6. Severability.

TITLE I—NATIONAL AUTHORITY

Sec. 101. Establishment.

TITLE II—APPLICATION OF CONVENTION PROHIBITIONS TO
NATURAL AND LEGAL PERSONS

- Sec. 201. Criminal provisions.
- Sec. 202. Effective date.
- Sec. 203. Restrictions on scheduled chemicals.

TITLE III—DECLARATIONS BY CHEMICAL INDUSTRY

- Sec. 301. Reporting of information.
- Sec. 302. Disclosure of information or materials.
- Sec. 303. Prohibited acts.

TITLE IV—INSPECTIONS

- Sec. 401. Inspections of chemical industry.
- Sec. 402. Other inspections and lead agency.
- Sec. 403. Prohibited acts.
- Sec. 404. Penalties.
- Sec. 405. Specific enforcement.
- Sec. 406. Legal proceedings.
- Sec. 407. Authority.

3 **SEC. 3. CONGRESSIONAL FINDINGS.**

4 The Congress makes the following findings:

5 (1) Chemical weapons pose a significant threat
6 to the national security of the United States and are
7 a scourge to humankind.

8 (2) The Chemical Weapons Convention is the
9 best means of ensuring the nonproliferation of chem-
10 ical weapons and their eventual destruction and for-
11 swearing by all nations.

1 (3) The verification procedures contained in the
2 Chemical Weapons Convention and the faithful ad-
3 herence of nations to them, including the United
4 States, are crucial to the success of the Convention.

5 (4) The declarations and inspections required
6 by the Chemical Weapons Convention are essential
7 for the effectiveness of the verification regime.

8 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

9 The Congress makes the following declarations:

10 (1) It shall be the policy of the United States
11 to cooperate with other States Parties to the Chemi-
12 cal Weapons Convention and afford the appropriate
13 form of legal assistance to facilitate the implementa-
14 tion of the prohibitions contained in title II of this
15 Act.

16 (2) It shall be the policy of the United States,
17 during the implementation of its obligations under
18 the Chemical Weapons Convention, to assign the
19 highest priority to ensuring the safety of people and
20 to protecting the environment, and to cooperate as
21 appropriate with other States Parties to the Conven-
22 tion in this regard.

23 (3) It shall be the policy of the United States
24 to minimize, to the greatest extent practicable, the
25 administrative burden and intrusiveness of measures

1 to implement the Chemical Weapons Convention
2 placed on commercial and other private entities, and
3 to take into account the possible competitive impact
4 of regulatory measures on industry, consistent with
5 the obligations of the United States under the Con-
6 vention.

7 **SEC. 5. DEFINITIONS.**

8 (a) IN GENERAL.—Except as otherwise provided in
9 this Act, the definitions of the terms used in this Act shall
10 be those contained in the Chemical Weapons Convention.

11 (b) OTHER DEFINITIONS.—

12 (1) The term “Chemical Weapons Convention”
13 means the Convention on the Prohibition of the De-
14 velopment, Production, Stockpiling and Use of
15 Chemical Weapons and on Their Destruction,
16 opened for signature on January 13, 1993.

17 (2) The term “national of the United States”
18 has the same meaning given such term in section
19 101(a)(22) of the Immigration and Nationality Act
20 (8 U.S.C. 1101(a)(22)).

21 (3) The term “United States,” when used in a
22 geographical sense, includes all places under the ju-
23 risdiction or control of the United States, includ-
24 ing—

1 (A) any of the places within the provisions
2 of section 101(41) of the Federal Aviation Act
3 of 1958, as amended (49 U.S.C. App. Sec.
4 1301(41)),

5 (B) any public aircraft or civil aircraft of
6 the United States, as such terms are defined in
7 sections 101 (36) and (18) of the Federal Avia-
8 tion Act of 1958, as amended (49 U.S.C. App.
9 Secs. 1301(36) and 1301(18)), and

10 (C) any vessel of the United States, as
11 such term is defined in section 3(b) of the Mar-
12 itime Drug Enforcement Act, as amended (46
13 U.S.C. App. Sec. 1903(b)).

14 (4) The term “person,” except as used in sec-
15 tion 201 of this Act and as set forth below, means—

16 (A) any individual, corporation, partner-
17 ship, firm, association, trust, estate, public or
18 private institution, any State or any political
19 subdivision thereof, or any political entity with-
20 in a State, any foreign government or nation or
21 any agency, instrumentality or political subdivi-
22 sion of any such government or nation, or other
23 entity located in the United States; and

1 (B) any legal successor, representative,
2 agent or agency of the foregoing located in the
3 United States.

4 The phrase “located in the United States” in
5 the term “person” shall not apply to the term
6 “person” as used in the phrases “person lo-
7 cated outside the territory” in sections 203(b),
8 203(c) and 302(c) of this Act and “person lo-
9 cated in the territory” in section 203(b) of this
10 Act.

11 (5) The term “Technical Secretariat” means
12 the Technical Secretariat of the Organization for the
13 Prohibition of Chemical Weapons established by the
14 Chemical Weapons Convention.

15 **SEC. 6. SEVERABILITY.**

16 If any provision of this Act, or the application of such
17 provision to any person or circumstance, is held invalid,
18 the remainder of this Act, or the application of such provi-
19 sion to persons or circumstances other than those as to
20 which it is held invalid, shall not be affected thereby.

21 **TITLE I—NATIONAL AUTHORITY**

22 **SEC. 101. ESTABLISHMENT.**

23 Pursuant to paragraph 4 of article VII of the Chemi-
24 cal Weapons Convention, the President or the designee of
25 the President shall establish the “United States National

1 Authority’’ to, inter alia, serve as the national focal point
 2 for effective liaison with the Organization for the Prohibi-
 3 tion of Chemical Weapons and other States Parties to the
 4 Convention.

5 TITLE II—APPLICATION OF CONVENTION PRO-
 6 HIBITIONS TO NATURAL AND LEGAL PER-
 7 SONS

8 **SEC. 201. CRIMINAL PROVISIONS.**

9 (a) IN GENERAL.—Part I of title 18, United States
 10 Code, is amended by—

11 (1) redesignating chapter 11A relating to child
 12 support as chapter 11B; and

13 (2) inserting after chapter 11 relating to brib-
 14 ery, graft and conflicts of interest the following new
 15 chapter:

16 “CHAPTER 11A—CHEMICAL WEAPONS

“Sec.

“227. Penalties and prohibitions with respect to chemical weapons.

“227A. Seizure, forfeiture, and destruction.

“227B. Injunctions.

“227C. Other prohibitions.

“227D. Definitions.

17 **“SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT**
 18 **TO CHEMICAL WEAPONS.**

19 “(a) IN GENERAL.—Except as provided in subsection
 20 (b), whoever knowingly develops, produces, otherwise ac-
 21 quires, stockpiles, retains, directly or indirectly transfers,
 22 uses, owns or possesses any chemical weapon, or know-

1 ingly assists, encourages or induces, in any way, any per-
2 son to do so, or attempts or conspires to do so, shall be
3 fined under this title or imprisoned for life or any term
4 of years, or both.

5 “(b) EXCLUSION.—Subsection (a) shall not apply to
6 the retention, ownership or possession of chemical weapon,
7 that is permitted by the Chemical Weapons Convention
8 pending the weapon’s destruction, by any agency or de-
9 partment of the United States. This exclusion shall apply
10 to any person, including members of the Armed Forces
11 of the United States, who is authorized by any agency or
12 department of the United States to retain, own or possess
13 a chemical weapon, unless that person knows or should
14 have known that such retention, ownership or possession
15 is not permitted by the Chemical Weapons Convention.

16 “(c) JURISDICTION.—There is jurisdiction by the
17 United States over the prohibited activity in subsection (a)
18 if (1) the prohibited activity takes place in the United
19 States or (2) the prohibited activity takes place outside
20 of the United States and is committed by a national of
21 the United States.

22 “(d) ADDITIONAL PENALTY.—The court shall order
23 that any person convicted of any offense under this section
24 pay to the United States any expenses incurred incident
25 to the seizure, storage, handling, transportation and de-

1 struction or other disposition of property seized for the
2 violation of this section.

3 **“SEC. 227A. SEIZURE, FORFEITURE, AND DESTRUCTION.**

4 “(a) SEIZURE.—

5 “(1) Except as provided in paragraph (2), the
6 Attorney General may request the issuance, in the
7 same manner as provided for a search warrant, of
8 a warrant authorizing the seizure of any chemical
9 weapon defined in section 227D(2)(A) of this title
10 that is of a type or quantity that under the cir-
11 cumstances is inconsistent with the purposes not
12 prohibited under the Chemical Weapons Convention.

13 “(2) In exigent circumstances, seizure and de-
14 struction of any such chemical weapon described in
15 paragraph (1) may be made by the Attorney General
16 upon probable cause without the necessity for a war-
17 rant.

18 “(b) PROCEDURE FOR FORFEITURE AND DESTRUC-
19 TION.—Property seized pursuant to subsection (a) shall
20 be forfeited to the United States. Except as inconsistent
21 herewith, the provisions of chapter 46 of this title relating
22 to civil forfeitures shall extend to a seizure or forfeiture
23 under this section. The Attorney General shall provide for
24 the destruction or other appropriate disposition of any

1 chemical weapon seized and forfeited pursuant to this sec-
2 tion.

3 “(c) AFFIRMATIVE DEFENSE.—It is an affirmative
4 defense against a forfeiture under subsection (b) that—

5 “(1) such alleged chemical weapon is for a pur-
6 pose not prohibited under the Chemical Weapons
7 Convention; and

8 “(2) such alleged chemical weapon is of a type
9 and quantity that under the circumstances is con-
10 sistent with that purpose.

11 “(d) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
12 TION.—

13 “(1) Except as provided in paragraph (2), the
14 Attorney General may request the issuance, in the
15 same manner as provided for a search warrant, of
16 a warrant authorizing the seizure of any chemical
17 weapon defined in section 227D(2) (B) or (C) of
18 this title that exists by reason of conduct prohibited
19 under section 227 of this title.

20 “(2) In exigent circumstances, seizure and de-
21 struction of any such chemical weapon described in
22 paragraph (1) may be made by the Attorney General
23 upon probable cause without the necessity for a war-
24 rant.

1 “(3) Property seized pursuant to this sub-
2 section shall be summarily forfeited to the United
3 States and destroyed.

4 “(e) ASSISTANCE.—The Attorney General may re-
5 quest assistance from any agency or department in the
6 handling, storage, transportation or destruction of prop-
7 erty seized under this section.

8 “(f) OWNER LIABILITY.—The owner or possessor of
9 any property seized under this section shall be liable to
10 the United States for any expenses incurred incident to
11 the seizure, including any expenses relating to the han-
12 dling storage, transportation and destruction or other dis-
13 position of the seized property.

14 **“SEC. 227B. INJUNCTIONS.**

15 “(a) IN GENERAL.—The United States may obtain
16 in a civil action an injunction against—

17 “(1) the conduct prohibited under section 227
18 of this title;

19 “(2) the preparation or solicitation to engage in
20 conduct prohibited under section 227 of this title; or

21 “(3) the development, production, other acquisi-
22 tion, stockpiling, retention, direct or indirect trans-
23 fer, use, ownership or possession, or the attempted
24 development, production, other acquisition, stock-
25 piling, retention, direct or indirect transfer, use,

1 ownership or possession, of any alleged chemical
2 weapon defined in section 227D(2)(A) of this title
3 that is of a type or quantity that under the cir-
4 cumstances is inconsistent with the purposes not
5 prohibited under the Chemical Weapons Convention,
6 or the assistance to any person to do so.

7 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative
8 defense against an injunction under subsection (a)(3)
9 that—

10 “(1) the conduct sought to be enjoined is for a
11 purpose not prohibited under the Chemical Weapons
12 Convention; and

13 “(2) such alleged chemical weapon is of a type
14 and quantity that under the circumstances is con-
15 sistent with that purpose.

16 **“SEC. 227C. OTHER PROHIBITIONS.**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (b), whoever knowingly uses riot control agents as a meth-
19 od of warfare, or knowingly assists any person to do so,
20 shall be fined under this title or imprisoned for a term
21 of not more than ten years, or both.

22 “(b) EXCLUSION.—Subsection (a) shall not apply to
23 members of the Armed Forces of the United States. Mem-
24 bers of the Armed Forces of the United States who use

1 riot control agents as a method of warfare shall be subject
2 to appropriate military penalties.

3 “(c) JURISDICTION.—There is jurisdiction by the
4 United States over the prohibited activity in subsection (a)
5 if (1) the prohibited activity takes place in the United
6 States or (2) the prohibited activity takes place outside
7 of the United States and is committed by a national of
8 the United States.

9 **“SEC. 227D. DEFINITIONS.**

10 “As used in this chapter, the term—

11 “(1) ‘Chemical Weapons Convention’ means the
12 Convention on the Prohibition of the Development,
13 Production, Stockpiling and Use of Chemical Weap-
14 ons and on Their Destruction, opened for signature
15 on January 13, 1993;

16 “(2) ‘chemical weapon’ means the following, to-
17 gether or separately—

18 “(A) a toxic chemical and its precursors,
19 except where intended for a purpose not prohib-
20 ited under the Chemical Weapons Convention,
21 as long as the type and quantity is consistent
22 with such a purpose;

23 “(B) a munition or device, specifically de-
24 signed to cause death or other harm through
25 the toxic properties of those toxic chemicals

1 specified in subparagraph (A), which would be
2 released as a result of the employment of such
3 munition or device; or

4 “(C) any equipment specifically designed
5 for use directly in connection with the employ-
6 ment of munitions or devices specified in sub-
7 paragraph (B);

8 “(3) ‘toxic chemical’ means any chemical which
9 through its chemical action on life processes can
10 cause death, temporary incapacitation or permanent
11 harm to humans or animals. This includes all such
12 chemicals, regardless of their origin or of their meth-
13 od of production, and regardless of whether they are
14 produced in facilities, in munitions or elsewhere;

15 “(4) ‘precursor’ means any chemical reactant
16 which takes part at any stage in the production by
17 whatever method of a toxic chemical. This includes
18 any key component of a binary or multicomponent
19 chemical system;

20 “(5) ‘key component of a binary or
21 multicomponent chemical system’ means the precu-
22 sor which plays the most important role in determin-
23 ing the toxic properties of the final product and re-
24 acts rapidly with other chemicals in the binary or
25 multicomponent system;

1 “(6) ‘purpose not prohibited under the Chemi-
2 cal Weapons Convention’ means—

3 “(A) industrial, agricultural, research,
4 medical, pharmaceutical or other peaceful pur-
5 poses;

6 “(B) protective purposes, namely those
7 purposes directly related to protection against
8 toxic chemicals and to protection against chemi-
9 cal weapons;

10 “(C) military purposes not connected with
11 the use of chemical weapons and not dependent
12 on the use of the toxic properties of chemicals
13 as a method of warfare; or

14 “(D) law enforcement purposes, including
15 domestic riot control purposes;

16 “(7) ‘national of the United States’ has the
17 same meaning given such term in section 101(a)(22)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(22));

20 “(8) ‘United States,’ when used in a geographi-
21 cal sense, includes all places under the jurisdiction
22 or control of the United States, including—

23 “(A) any of the places within the provi-
24 sions of section 101(41) of the Federal Aviation

1 Act of 1958, as amended (49 U.S.C. App. Sec.
2 1301(41)),

3 “(B) any public aircraft or civil aircraft of
4 the United States, as such terms are defined in
5 sections 101(36) and (18) of the Federal Avia-
6 tion Act of 1958, as amended (49 U.S.C. App.
7 Secs. 1301(36) and 1301(18)), and

8 “(C) any vessel of the United States, as
9 such term is defined in section 3(b) of the Mar-
10 itime Drug Enforcement Act, as amended (46
11 U.S.C. App. Sec. 1903(b));

12 “(9) ‘person’ means—

13 “(A) any individual, corporation, partner-
14 ship, firm, association, trust, estate, public or
15 private institution, any State or any political
16 subdivision thereof, or any political entity with-
17 in a State, any foreign government or nation or
18 any agency, instrumentality or political subdivi-
19 sion of any such government or nation, or other
20 entity; and

21 “(B) any legal successor, representative,
22 agent or agency of the foregoing; and

23 “(10) ‘riot control agent’ means any chemical
24 not listed in a Schedule in the Annex on Chemicals
25 of the Chemical Weapons Convention, which can

1 produce rapidly in humans sensory irritation or dis-
 2 abling physical effects which disappear within a
 3 short time following termination of exposure.”

4 (b) CLERICAL AMENDMENTS.—The table of chapters
 5 for part I of title 18, United States Code, is amended by—

6 (1) in the item for chapter 11A relating to child
 7 support, redesignating “11A” as “11B”; and

8 (2) inserting after the item for chapter 11 the
 9 following new item:

“11A. Chemical Weapons
 227.”

10 **SEC. 202. EFFECTIVE DATE.**

11 This title shall take effect on the date the Chemical
 12 Weapons Convention enters into force for the United
 13 States.

14 **SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.**

15 (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful
 16 for any person or any national of the United States lo-
 17 cated outside the United States to produce, acquire, re-
 18 tain, transfer or use a chemical listed on Schedule 1 of
 19 the Annex on Chemicals of the Chemical Weapons Conven-
 20 tion, unless—

21 (1) the chemicals are applied to research, medi-
 22 cal, pharmaceutical or protective purposes;

1 (2) the types and quantities of chemicals are
2 strictly limited to those that can be justified for such
3 purposes; and

4 (3) the amount of such chemicals per person at
5 any given time for such purposes does not exceed a
6 limit to be determined by the United States National
7 Authority, but in any case, does not exceed one met-
8 ric ton.

9 (b) EXTRATERRITORIAL ACTS.—

10 (1) It shall be unlawful for any person or any
11 national of the United States located outside the
12 United States to produce, acquire, retain or use a
13 chemical listed on Schedule 1 of the Annex on
14 Chemicals of the Chemical Weapons Convention out-
15 side the territories of the States Parties to the Con-
16 vention or to transfer such chemicals to any person
17 located outside the territory of the United States,
18 except as provided for in the Convention for transfer
19 to a person located in the territory of another State
20 Party to the Convention.

21 (2) Beginning three years after the entry into
22 force of the Chemical Weapons Convention, it shall
23 be unlawful for any person or any national of the
24 United States located outside the United States to
25 transfer a chemical listed on Schedule 2 of the

1 Annex on Chemical of the Convention to any person
2 located outside the territory of a State Party to the
3 Convention or to receive such a chemical from any
4 person located outside the territory of a State Party
5 to the Convention.

6 (c) JURISDICTION.—There is jurisdiction by the
7 United States over the prohibited activity in subsections
8 (a) and (b) if (1) the prohibited activity takes place in
9 the United States or (2) the prohibited activity taken place
10 outside of the United States and is committed by a na-
11 tional of the United States.

12 TITLE III—DECLARATIONS BY CHEMICAL
13 INDUSTRY

14 **SEC. 301. REPORTING OF INFORMATION.**

15 (a) REPORTS.—The Department of Commerce shall
16 promulgate regulations under which each person who pro-
17 duces, processes, consumes, exports or imports, or pro-
18 poses to produce, process, consume, export or import, a
19 chemical substance subject to the Chemical Weapons Con-
20 vention shall maintain and permit access to such records
21 and shall submit to the Department of Commerce such
22 reports as the United States National Authority may rea-
23 sonably require pursuant to the Chemical Weapons Con-
24 vention. The Department of Commerce shall promulgate

1 regulations pursuant to this title expeditiously, and may
2 amend or change such regulations as necessary.

3 (b) COORDINATION.—To the extent feasible, the
4 United States National Authority shall not require any re-
5 porting that is unnecessary, or duplicative of reporting re-
6 quired under any other Act. Agencies and department
7 shall coordinate their actions with other agencies and de-
8 partments to avoid duplication of reporting by the affected
9 persons under this Act or any other Act.

10 **SEC. 302. DISCLOSURE OF INFORMATION ON MATERIALS.**

11 (a) IN GENERAL.—Any information or materials re-
12 ported to, or otherwise obtained by, the United States Na-
13 tional Authority or the Department of Commerce, or any
14 other agency or department under this Act or the Chemi-
15 cal Weapons Convention may be withheld from public dis-
16 closure or provision only to the extent permitted by law.
17 Information or materials obtained from declarations or in-
18 spections required by the Chemical Weapons Convention,
19 that are not already in the public domain, shall be with-
20 held from public disclosure or provision and shall not be
21 required to be disclosed pursuant to section 552 of title
22 5, United States Code, except that such information or
23 material—

24 (1) shall be disclosed or otherwise provided to
25 the Technical Secretariat or other States Parties to

1 the Chemical Weapons Convention in accordance
2 with the Convention, in particular, the provisions of
3 the Annex on the Protection of Confidential Infor-
4 mation;

5 (2) shall be made available to any committee or
6 subcommittee of Congress of appropriate jurisdiction
7 upon the written request of the chairman or ranking
8 minority member of such committee or subcommit-
9 tee, except that no such committee or subcommittee,
10 or member thereof, shall disclose such information
11 or material;

12 (3) shall be disclosed to other agencies or de-
13 partments for law enforcement purposes with regard
14 to this Act or any other Act, and may be disclosed
15 or otherwise provided when relevant in any proceed-
16 ing under this Act or any other Act, except that dis-
17 closure or provision in such a proceeding shall be
18 made in such manner as to preserve confidentiality
19 to the extent practicable without impairing the pro-
20 ceeding; and

21 (4) may be disclosed, including in the form of
22 categories of information, if the United States Na-
23 tional Authority determines that such disclosure is
24 in the national interest.

1 (b) NOTICE OF DISCLOSURE.—If the United States
2 National Authority, pursuant to subsection (a)(4), pro-
3 poses to publish or disclose or otherwise provide informa-
4 tion or materials exempted from disclosure in subsection
5 (a), the United States National Authority shall, where ap-
6 propriate, notify the person who submitted such informa-
7 tion or materials of the intent to release such information
8 or materials. Where notice has been provided, the United
9 States National Authority may not release such informa-
10 tion or materials until the expiration of 30 days after no-
11 tice has been provided.

12 (c) CRIMINAL PENALTY FOR WRONGFUL DISCLO-
13 SURE.—Any officer or employee of the United States or
14 former officer or employee of the United States, who by
15 virtue of such employment or official position has obtained
16 possession of, or has access to, information or materials
17 the disclosure or other provision of which is prohibited by
18 subsection (a), and who knowing that disclosure or provi-
19 sion of such information or materials is prohibited by such
20 subsection, willfully discloses or otherwise provides the in-
21 formation or materials in any manner to any person, in-
22 cluding persons located outside the territory of the United
23 States, not entitled to receive it, shall be fined under title
24 18, United States Code, or imprisoned for not more than
25 five years, or both.

1 (d) INTERNATIONAL INSPECTORS.—The provisions of
2 this section on disclosure or provision of information or
3 materials shall also apply to employees of the Technical
4 Secretariat.

5 **SEC. 303. PROHIBITED ACTS.**

6 It shall be unlawful for any person to fail or refuse
7 to (a) establish or maintain records, (b) submit reports,
8 notices, or other information to the Department of Com-
9 merce or the United States National Authority, or (c) per-
10 mit access to or copying of records, as required by this
11 Act or a regulation thereunder.

12 **TITLE IV—INSPECTIONS**

13 **SEC. 401. INSPECTIONS OF CHEMICAL INDUSTRY.**

14 (a) AUTHORITY.—For purposes of administering this
15 Act—

16 (1) any duly designated member of an inspec-
17 tion team of the Technical Secretariat may inspect
18 any plant, plant site, or other facility or location in
19 the United States subject to inspection pursuant to
20 the Chemical Weapons Convention; and

21 (2) any duly designated representative of an
22 agency or department may accompany members of
23 an inspection team of the Technical Secretariat dur-
24 ing the inspection specified in paragraph (1).

1 (b) NOTICE.—An inspection pursuant to subsection
2 (a) may be made only upon issuance of a written notice
3 to the owner and to the operator, occupant or agent in
4 charge of the premises to be inspected, except that failure
5 to receive a notice shall not be a bar to the conduct of
6 an inspection. The notice shall be submitted to the owner
7 and to the operator, occupant or agent in charge as soon
8 as possible after the United States National Authority re-
9 ceives it from the Technical Secretariat. The notice shall
10 include all appropriate information supplied by the Tech-
11 nical Secretariat to the United States National Authority
12 regarding the basis for the selection of the plant site,
13 plant, or other facility or location for the type of inspection
14 sought, including, for challenge inspections pursuant to
15 Article IX of the Chemical Weapons Convention, appro-
16 priate evidence or reasons provided by the requesting
17 State Party to the Convention with regard to its concerns
18 about compliance with the Chemical Weapons Convention
19 at the facility or location. A separate notice shall be given
20 for each such inspection, but a notice shall not be required
21 for each entry made during the period covered by the in-
22 spection.

23 (c) CREDENTIALS.—If the owner, operator, occupant
24 or agent in charge of the premises to be inspected is
25 present, a member of the inspection team of the Technical

1 Secretariat, as well as, if present, the representatives of
2 agencies or departments, shall present appropriate creden-
3 tials before the inspection is commenced.

4 (d) TIME FRAME FOR INSPECTIONS.—Consistent
5 with the provisions of the Chemical Weapons Convention,
6 each inspection shall be commenced and completed with
7 reasonable promptness and shall be conducted at reason-
8 able times, within reasonable limits, and in a reasonable
9 manner. The Department of Commerce shall endeavor to
10 ensure that, to the extent possible, each inspection is com-
11 menced, conducted and concluded during ordinary work-
12 ing hours, but no inspection shall be prohibited or other-
13 wise disrupted for commencing, continuing or concluding
14 during other hours. However, nothing in this subsection
15 shall be interpreted as modifying the time frames estab-
16 lished in the Chemical Weapons Convention.

17 (e) SCOPE.—

18 (1) Except as provided in paragraph (2) of this
19 subsection and subsection (f), an inspection con-
20 ducted under this title may extend to all things with-
21 in the premises inspected (including records, files,
22 papers, processes, controls, structures and entering
23 and existing vehicles) related to whether the require-
24 ments of the Chemical Weapons Convention applica-
25 ble to such premises have been complied with.

1 (2) To the extent possible consistent with the
2 obligations of the United States pursuant to the
3 Chemical Weapons Convention, no inspection under
4 this title shall extend to—

5 (A) financial data;

6 (B) sales and marketing data (other than
7 shipment data);

8 (C) pricing data;

9 (D) personnel data;

10 (E) research data;

11 (F) patent data; or

12 (G) data maintained for compliance with
13 environmental or occupational health and safety
14 regulations.

15 (f) FACILITY AGREEMENTS.—

16 (1) Inspections of plants, plant sites, or other
17 facilities or locations for which the United States
18 has a facility agreement with the Organization for
19 the Prohibition of Chemical Weapons shall be con-
20 ducted in accordance with the facility agreement.

21 (2) Facility agreements shall be concluded for
22 plants, plant sites, or other facilities or locations
23 that are subject to inspection pursuant to paragraph
24 4 of Article VI of the Chemical Weapons Convention
25 unless the owner and the operator, occupant or

1 agent in charge of the facility and the Technical
2 Secretariat agree that such an agreement is not nec-
3 essary. Facility agreements should be concluded for
4 plants, plant sites, or other facilities or locations
5 that are subject to inspection pursuant to paragraph
6 5 or 6 of Article VI of the Chemical Weapons Con-
7 vention if so requested by the owner and the opera-
8 tor, occupant or agent in charge of the facility.

9 (3) The owner and the operator, occupant or
10 agent in charge shall, to the extent practicable con-
11 sistent with the obligations of the United States
12 under the Chemical Weapons Convention, participate
13 in the negotiation of all facility agreements con-
14 cluded pursuant to the Convention.

15 (g) SAMPLING AND SAFETY.—

16 (1) The Department of Commerce is authorized
17 to require the provision of samples to a member of
18 the inspection team of the Technical Secretariat in
19 accordance with the provisions of the Chemical
20 Weapons Convention. The owner or the operator, oc-
21 cupant or agent in charge of the premises to be in-
22 spected shall determine whether the sample shall be
23 taken by representatives of the premises or the in-
24 spection team or other individuals present.

1 (2) In carrying out their activities, members of
2 the inspection team of the Technical Secretariat and
3 representatives of agencies or departments accom-
4 panying the inspection team shall observe safety reg-
5 ulations established at the premises to be inspected,
6 including those for protection of controlled environ-
7 ments within a facility and for personal safety.

8 (h) COORDINATION.—To the extent possible consist-
9 ent with the obligations of the United States pursuant to
10 the Chemical Weapons Convention, the representatives of
11 the United States National Authority, the Department of
12 Commerce and any other agency or department, if
13 present, shall assist the owner and the operator, occupant
14 or agent in charge of the premises to be inspected in inter-
15 acting with the members of the inspection team of the
16 Technical Secretariat.

17 **SEC. 402. OTHER INSPECTIONS AND LEAD AGENCY.**

18 (a) OTHER INSPECTIONS.—The provisions of this
19 title shall apply, as appropriate, to all other inspections
20 authorized by the Chemical Weapons Convention. For all
21 inspections other than those conducted pursuant to para-
22 graph 4, 5 or 6 of article VI of the Convention, the term
23 “Department of Commerce” shall be replaced by the term
24 “Lead Agency” in section 401.

1 (b) LEAD AGENCY.—For the purposes of this title,
2 the term “Lead Agency” means the agency or department
3 designated by the President or the designee of the Presi-
4 dent to exercise the functions and powers set forth in the
5 specific provision, based, inter alia, on the particular re-
6 sponsibilities of the agency or department within the
7 United States Government and the relationship of the
8 agency or department to the premises to be inspected.

9 **SEC. 403. PROHIBITED ACTS.**

10 It shall be unlawful for any person to fail or refuse
11 to permit entry or inspection, or to disrupt, delay or other-
12 wise impede an inspection as required by this Act or the
13 Chemical Weapons Convention.

14 **SEC. 404. PENALTIES.**

15 (a) CIVIL.—

16 (1) Any person who violates a provision of sec-
17 tion 203, 303 or 403 of this Act shall be liable to
18 the United States for a civil penalty in an amount
19 not to exceed \$50,000 for each such violation. For
20 purposes of this subsection, each day such a viola-
21 tion of section 403 continues shall constitute a sepa-
22 rate violation of section 403.

23 (2)(A) A civil penalty for a violation of section
24 203, 303 or 403 of this Act shall be assessed by the
25 Lead Agency by an order made on the record after

1 opportunity (provided in accordance with this sub-
2 paragraph) for a hearing in accordance with section
3 554 of title 5, United States Code. Before issuing
4 such an order, the Lead Agency shall give written
5 notice to the person to be assessed a civil penalty
6 under such order of the Lead Agency's proposal to
7 issue such order and provide such person an oppor-
8 tunity to request, within 15 days of the date the no-
9 tice is received by such person, such a hearing on
10 the order.

11 (B) In determining the amount of a civil pen-
12 alty, the Lead Agency shall take into account the
13 nature, circumstances, extent and gravity of the vio-
14 lation or violations and, with respect to the violator,
15 ability to pay, effect on ability to continue to do
16 business, any history of prior such violations, the de-
17 gree of culpability, and such other matters as justice
18 may require.

19 (C) The Lead Agency may compromise, modify
20 or remit, with or without conditions, any civil pen-
21 alty which may be imposed under this subsection.
22 The amount of such penalty, when finally deter-
23 mined, or the amount agreed upon in compromise,
24 may be deducted from any sums owing by the
25 United States to the person charged.

1 (3) any person who requested in accordance
2 with paragraph (2)(A) a hearing respecting the as-
3 sessment of a civil penalty and who is aggrieved by
4 an order assessing a civil penalty may file a petition
5 for judicial review of such order with the United
6 States Court of Appeals for the District of Columbia
7 Circuit or for any other circuit in which such person
8 resides or transacts business. Such a petition may be
9 filed only within the 30-day period beginning on the
10 date the order making such assessment was issued.

11 (4) If any person fails to pay an assessment of
12 a civil penalty—

13 (A) after the order making the assessment
14 has become a final order and if such person
15 does not file a petition for judicial review of the
16 order in accordance with paragraph (3); or

17 (B) after a court in an action brought
18 under paragraph (3) has entered a final judg-
19 ment in favor of the Lead Agency;

20 the Attorney General shall recover the amount as-
21 sessed (plus interest at currently prevailing rates
22 from the date of the expiration of the 30-day period
23 referred to in paragraph (3) or the date of such final
24 judgment, as the case may be) in an action brought
25 in any appropriate district court of the United

1 States. In such an action, the validity, amount and
2 appropriateness of such penalty shall not be subject
3 to review.

4 (b) CRIMINAL.—Any person who knowingly violates
5 any provision of section 203, 303 or 403 of this Act, shall,
6 in addition to or in lieu of any civil penalty which may
7 be imposed under subsection (a) for such violation, be
8 fined under title 18, United States Code, imprisoned for
9 not more than two years, or both.

10 **SEC. 405. SPECIFIC ENFORCEMENT.**

11 (a) JURISDICTION.—The district courts of the United
12 States shall have jurisdiction over civil actions to—

13 (1) restrain any violation of section 203, 303 or
14 403 of this Act; and

15 (2) compel the taking of any action required by
16 or under this Act or the Chemical Weapons Conven-
17 tion.

18 (b) CIVIL ACTIONS.—A civil action described in sub-
19 section (a) may be brought—

20 (1) in the case of a civil action described in sub-
21 section (a)(1), in the United States district court for
22 the judicial district wherein any act, omission, or
23 transaction constituting a violation of section 203,
24 303 or 403 of this Act occurred or wherein the de-
25 fendant is found or transacts business; or

1 (2) in the case of a civil action described in sub-
2 section (a)(2), in the United States district court for
3 the judicial district wherein the defendant is found
4 or transacts business.

5 In any such civil action process may be served on a defend-
6 ant wherever the defendant may reside or may be found,
7 whether the defendant resides or may be found within the
8 United States or elsewhere.

9 **SEC. 406. LEGAL PROCEEDINGS.**

10 (A) WARRANTS.—

11 (1) The lead agency shall seek the consent of
12 the owner or the operator, occupant or agent in
13 charge of the premises to be inspected prior to the
14 initiation of any inspection. Before or after seeking
15 such consent, the lead agency may seek a search
16 warrant from any official authorized to issue search
17 warrants. Proceedings regarding the issuance of a
18 search warrant shall be conducted ex parte, unless
19 otherwise requested by the lead agency. The lead
20 agency shall provide to the official authorized to
21 issue search warrants all appropriate information
22 supplied by the Technical Secretariat to the United
23 States National Authority regarding the basis for
24 the selection of the plant site, plant, or other facility
25 or location for the type of inspection sought, includ-

1 ing, for challenge inspections pursuant to article IX
2 of the Chemical Weapons Convention, appropriate
3 evidence or reasons provided by the requesting State
4 Party to the Convention with regard to its concerns
5 about compliance with the Chemical Weapons Con-
6 vention at the facility or location. The lead agency
7 shall also provide any other appropriate information
8 available to it relating to the reasonableness of the
9 selection of the plant, plant site, or other facility or
10 location for the inspection.

11 (2) The official authorized to issue search war-
12 rants shall promptly issue a warrant authorizing the
13 requested inspection upon an affidavit submitted by
14 the lead agency showing that—

15 (A) the Chemical Weapons Convention is
16 in force for the United States;

17 (B) the plant site, plant, or other facility
18 or location sought to be inspected is subject to
19 the specific type of inspection requested under
20 the Chemical Weapons Convention;

21 (C) the procedures established under the
22 Chemical Weapons Convention and this Act for
23 initiating an inspection have been complied
24 with; and

1 (D) the lead agency will ensure that the in-
2 spection is conducted in a reasonable manner
3 and will not exceed the scope or duration set
4 forth in or authorized by the Chemical Weapons
5 Convention of this Act.

6 (3) The warrant shall specify the type of in-
7 spection authorized; the purpose of the inspection;
8 the type of plant site, plant, or other facility or loca-
9 tion to be inspected; to the extent possible, the
10 items, documents and areas that may be inspected;
11 the earliest commencement and latest concluding
12 dates and times of the inspection; and the identities
13 of the representatives of the Technical Secretariat, if
14 known, and, if applicable, the representatives of
15 agencies or departments.

16 (b) SUBPOENAS.—In carrying out this Act, the lead
17 agency may by subpoena require the attendance and testi-
18 mony of witnesses and the production of reports, papers,
19 documents, answers to questions and other information
20 that the lead agency deems necessary. Witnesses shall be
21 paid the same fees and mileage that are paid witnesses
22 in the courts of the United States. In the event of contu-
23 macy, failure or refusal of any person to obey any such
24 subpoena, any district court of the United States in which
25 venue is proper shall have jurisdiction to order any such

1 person to comply with such subpoena. Any failure to obey
 2 such an order of the court is punishable by the court as
 3 a contempt thereof.

4 (c) INJUNCTIONS AND OTHER ORDERS.—No court
 5 shall issue an injunction or other order that would limit
 6 the ability of the Technical Secretariat to conduct, or the
 7 United States National Authority or the lead agency to
 8 facilitate inspections as required or authorized by the
 9 Chemical Weapons Convention.

10 **SEC. 407. AUTHORITY.**

11 The lead agency may issue such regulations as are
 12 necessary to implement this title and the provisions of the
 13 Chemical Weapons Convention, and amend or revise them
 14 as necessary. The lead agency shall have the authority to
 15 appoint officials to issue warrants pursuant to section
 16 406(a) authorizing inspections pursuant to this title.

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